

Race Discrimination Ordinance
Code of Practice on Employment

Views and concerns of deputations on 12 June 2009

Views and concerns	EOC's response
<p>1 <u>Incorrect or misleading contents</u></p> <p>1.1 It is not correct to include contents relating to Equal Pay for Equal Value (Employers' Federation of Hong Kong)</p> <p>1.2 Employers have no obligation to promote and monitor racial equality (Employers' Federal of Hong Kong)</p>	<p>1.1 Segregation of men and women in different jobs of equal value but are paid differently has been widespread. General principles of Equal Pay for Equal Value are mainly articulated in the context of gender equality and are included in the code under the Sex Discrimination Ordinance. The issue is not necessarily confined to the gender context, but may also arise in the context of racial equality, or equality for people with disabilities. It is appropriate to include principles of Equal Pay for Equal Value in the Code in order to promote racial equality. These principles are also included in the code under the Disability Discrimination Ordinance.</p> <p>1.2 Unlike race equality legislation in the UK (which imposes a positive duties on public authorities to promote racial equality), the RDO does not impose a duty to promote on employers. However, the purpose of the Code is to provide practical guidance for the purpose of promoting racial equality. It is</p>

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<p>1.3 Contents on language requirement misleading, in particular the reference to <i>Raval v Department of Health and Social Security</i> [1985] ICR 685 (Unitarian Universalists Hong Kong)</p>	<p>appropriate for the Code to encourage employers promote and monitor racial equality and provide guidance on these matters.</p> <p>1.3 The Code states that language requirement or condition may lead to claims of indirect discrimination. <i>Raval v Department of Health and Social Security</i> [1985] ICR 685 was a case that shows how such a claim may arise. The crucial issue is whether, on the facts of each case, the requirement or condition is relevant and appropriate to the job. The EOC considers that the case is a useful reference. By way of improvement, the EOC will consider clarification to make it clear that each case has to be decided on its own facts.</p>
<p>2 <u>Structure, wordings, and other suggestions for improvement</u></p> <p>2.1 The chapter on unlawful acts under the RDO (Chapter 6) should go between the chapter on the meaning of race (Chapter 2) and the chapter on the scope of the RDO (Society for Community Organization).</p>	<p>2.1 The structure of Code is intended to give place emphasis on the recommendations for good practice. After a brief introduction in Chapter 1, the Code sets out the general background by dealing the meaning of race and the scope of and rights and responsibilities under the RDO in Chapters 2 to 4. The chapter on good practice (Chapter 5) is placed before the chapter on unlawful acts (Chapter 6). This sequence is adopted after taking into</p>

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2.2 Harassment downplayed and insufficient details relating to harassment policy (Society for Community Organization)	<p>account views that more emphasis should be placed on good practice rather than explaining the law (University of Hong Kong, 19.1.09, paragraph 5).</p> <p>2.2 The issue of harassment is dealt with in different parts of the Code, including in Chapter 5 (good practice) and Chapter 6 (unlawful acts). The EOC will consider enhancing the details on this issue in the light of the deputations' views.</p>
2.3 "Should", "Recommend", "Encourage" (HKSKH Lady MacLehose Centre)	2.3 The Code itself does not impose legal obligations. It provides information, guidance and recommendations. The words used ("should", "recommend" or "encourage") are all intended to be positive.
2.4 Details on action to be taken when discrimination encountered (Nisha Electronic Industries Ltd); details on conciliation and legal assistance (Hong Kong Unison)	2.4 The Code encourages employers and employees are encouraged to resolve discrimination and harassment issues informally or formally through internal grievance procedures. It explains that the rights of workers to be free from discrimination and harassment are protected by law, and that they may bring civil proceedings to seek redress. As an alternative, they may also complaints with the EOC. The EOC will consider enhancing the details on these matters in the light of the deputations' views.
2.5 Details on language requirement for vocational training	2.5 The EOC will consider enhancing the details on these matters in the light of

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(Hong Kong Unison; Federation of Hong Kong & Kowloon Labour Union)	the deputations' views.
2.6 Keeping records of shortlisting (Federation of Hong Kong & Kowloon Labour Union); Record keeping for 24 months (Hong Kong Human Rights Monitor)	2.6 The EOC will consider enhancing the details on these matters in the light of the deputations' views.
2.7 Sample policy for SMEs (Employers' Federation of Hong Kong)	2.7 The Code recognizes that employers and organizations vary in structure and available resources. The sample policy is for reference purposes. The details of a policy dealing with racial equality will depend on the actual circumstances, including the scale and structure of the individual organization and available resources.
2.8 Promotional activities, simplified materials, accessible versions (Mr. Hung Chiu-wah; Hong Kong Human rights Monitor)	2.8 The EOC will engage in various activities to promote public awareness of the RDO and the Code.